

CCRB INVESTIGATIVE RECOMMENDATION

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|---|-------------------------------------|---------------------------|--|------------------------------------|--|
| Investigator: Thomas Juliano | Team: Squad #6 | CCRB Case #: 201905084 | <input checked="" type="checkbox"/> Force | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input checked="" type="checkbox"/> Injury |
| Incident Date(s) Wednesday, 06/05/2019 5:00 PM | Location of Incident: § 87(2)(b) | Precinct: 71 | 18 Mo. SOL 12/5/2020 | EO SOL 7/22/2021 | |
| Date/Time CV Reported Wed, 06/12/2019 12:11 PM | CV Reported At: CCRB | How CV Reported: Phone | Date/Time Received at CCRB Wed, 06/12/2019 12:11 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------------|--------------|
| § 87(2)(b) | § 87(2)(b) | § 87(2)(b) |
| § 87(2)(b) | § 87(2)(b) | § 87(2)(b) |

| Witness(es) | Home Address |
|-------------|--------------|
| § 87(2)(b) | § 87(2)(b) |
| § 87(2)(b) | § 87(2)(b) |
| § 87(2)(b) | § 87(2)(b) |

| Subject Officer(s) | Shield | TaxID | Command |
|-------------------------|--------|--------|---------|
| 1. SGT Christian Carlin | 303 | 941501 | 071 PCT |
| 2. SGT Kenneth Burke | 02581 | 927986 | ESS 07 |
| 3. An officer | | | ESS 07 |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|---------------------------|-----------|--------|----------|
| 1. POM John Zielin | 25624 | 951467 | ESS 07 |
| 2. POF Jennifer Caparatta | 06626 | 961553 | 071 PCT |
| 3. POF Viktoria Bibolova | 12818 | 960248 | 071 PCT |
| 4. POM Lawrence Spina | 29582 | 965547 | 071 PCT |
| 5. POM Robert Mui | 08191 | 956117 | 071 PCT |
| 6. POF Denisse Klass | 27818 | 928585 | 071 PCT |
| 7. LT Timothy Slattery | 00000 | 941143 | 071 PCT |
| 8. DTS James Shields | 05032 | 927515 | ESS 07 |
| 9. DTS Michael Gannon | 4090 | 934896 | ESS 07 |
| 10. DTS Timothy Ramo | 4508 | 947830 | ESS 07 |
| 11. DT2 Robert Zajac | 07443 | 896804 | ESS 07 |

| Officer(s) | Allegation | Investigator Recommendation |
|------------------------|--|-----------------------------|
| A.SGT Christian Carlin | Abuse: Sergeant Christian Carlin entered § 87(2)(b) in Brooklyn. | § 87(2)(b) |
| B.SGT Kenneth Burke | Abuse: Sergeant Kenneth Burke damaged § 87(2)(b) s property. | § 87(2)(b) |
| C.SGT Kenneth Burke | Abuse: Sergeant Kenneth Burke forcibly removed § 87(2)(b) to the hospital. | § 87(2)(b) |
| D. An officer | Force: An officer used physical force against § 87(2)(b) | § 87(2)(b) |

Case Summary

On June 20, 2019, § 87(2)(b) filed this complaint with the CCRB over the phone.

On June 5, 2019, at approximately 5 p.m., § 87(2)(b)'s mother, § 87(2)(b) called 911 and requested medical treatment for § 87(2)(b). § 87(2)(b) barricaded herself in a bedroom of her mother's apartment. Officers, including Sgt. Christian Carlin from the 71st Precinct, entered § 87(2)(b)'s apartment (**Allegation A: Abuse of Authority, § 87(2)(g)**). ESU officers, under the supervision of Sgt. Kenneth Burke, damaged § 87(2)(b)'s door (**Allegation B: Abuse of Authority, § 87(2)(g)**) and forcibly removed § 87(2)(b) to the hospital (**Allegation C: Abuse of Authority, § 87(2)(g)**). While placing § 87(2)(b) onto the stretcher, an officer allegedly slammed her down onto the stretcher (**Allegation D: Force, § 87(2)(g)**). No arrest or summons resulted from this incident.

§ 87(2)(b) recorded seven videos of the incident on her cellphone. The videos can be found in IAs #31-37 and summaries of the videos can be found in IA 108 (**Board Review 01**). BWC footage was obtained and can be found in IAs #69-77 and summaries of the footage can be found in IA 95 (**Board Review 02**).

Sgt. Carlin's BWC footage, at the at 54:20 mark of the timestamp visible on the bottom of the screen, PO Caparatta states, "These people think, just because they're Jewish..." Sgt. Carlin then cuts her off by making noises (**Board Review 24**). An offensive language allegation has not been pled as there were no civilians present when PO Caparatta made the statement. A spinoff was made to IAB § 87(2)(g).

Findings and Recommendations

Allegation A – Abuse of Authority: Sergeant Christian Carlin entered § 87(2)(b) Apartment 2, in Brooklyn.

Allegation B – Abuse of Authority: Sergeant Kenneth Burke damaged § 87(2)(b)'s property.

Allegation C – Abuse of Authority: Sergeant Kenneth Burke forcibly removed § 87(2)(b) to the hospital.

§ 87(2)(b) testified that she was at her mother's house, where she also resided, located at § 87(2)(b) when she got into an argument with her mother, § 87(2)(b). § 87(2)(b) left the apartment and § 87(2)(b) locked the door behind her. § 87(2)(b) called 911 because she smelled a gas leak in the building. Even though § 87(2)(b) smelled an odor of gas, she did not leave the apartment because she believed that her mother had called the police on her. Police cars and ambulances arrived at the location. An EMT spoke with § 87(2)(b) outside of the building. Either an EMT or an officer, § 87(2)(b) was not sure, told § 87(2)(b) to exit the building. § 87(2)(b) told the individual that she did not need an ambulance. The individual responded that they were coming upstairs. § 87(2)(b) went inside of a room and locked herself inside of the room. § 87(2)(b) believed that officers broke open the front door of the apartment and entered. Officers knocked on the door of the room that § 87(2)(b) was locked in. § 87(2)(b) opened the door slightly, to show the officers that she was okay, and saw ESU officers. The officers continuously attempted to convince § 87(2)(b) to exit the room and speak with the EMTs, and said that they were not leaving until she did; however, § 87(2)(b) refused to leave the room. The ESU officers cut a hole in the door, inserted a hook, and attempted to pull the door open. However, they were unsuccessful. After approximately 40 minutes, § 87(2)(b) opened the door slightly and approximately five officers pushed their way into the room and handcuffed her on a bed in the room (**Board Review 03**).

§ 87(2)(b) recorded a portion of this incident on her cellphone. The video, starting at the 09:30 mark of the timestamp visible at the bottom of the screen, shows that § 87(2)(b) had furniture wedged against the door to the bedroom as ESU officers attempt to convince her to leave the room. At 15:57, an ESU officer drills a hole into the door and inserts a metal rod attached to a chain. At 40:00, the ESU officers remove the door from the frame and enter the room. The camera view then becomes obscured as the officers approach § 87(2)(b) **(Board Review 04).**

§ 87(2)(b) who provided a phone statement, stated that after § 87(2)(b) locked her out she was concerned for § 87(2)(b)'s safety and called 911 to obtain medical treatment for § 87(2)(b). Officers and EMTs responded to the location and § 87(2)(b) went to the apartment door with them. § 87(2)(b) opened the front door, but then ran further into the apartment and locked herself inside of a room. § 87(2)(b) entered the apartment with the officers and EMTs. § 87(2)(b) did not invite the officers in, but felt that it was implied that they could enter as she called 911 for assistance, and she did not have a complaint regarding the officers entering her apartment. ESU responded and asked § 87(2)(b) to wait outside of the building, which she did. § 87(2)(b) later saw that the door to the room that § 87(2)(b) was locked in was taken off of its hinges. § 87(2)(b) was not upset that the door was damaged, and believed that the officers did what they had to do to ensure that § 87(2)(b) was safe **(Board Review 05).**

PO Caparatta's BWC footage, starting at the 00:00 mark of the timestamp visible at the bottom of the screen, shows FDNY firefighters exiting the building as officers make their way up to § 87(2)(b)'s apartment. At 01:24, § 87(2)(b) attempts to use her keys to open the door for the officers but is unsuccessful. At 04:04, § 87(2)(b) opens the front door, tells the officers that § 87(2)(b) accused her of stealing, and then runs further into the apartment. PO Caparatta, Sgt. Carlin, and officers enter the apartment and follow § 87(2)(b) who enters a room and closes the door **(Board Review 06).**

PO Mui's BWC footage, at the 22:35 timestamp visible at the bottom of the screen, PO Mui says to § 87(2)(b) "They're going to try to extract her, but we may need to take down the door as a result, alright?" § 87(2)(b) replies, "I don't care. She just needs to get the help that she needs" **(Board Review 07).**

EMT § 87(2)(b) and EMT § 87(2)(b) who provided phone statements, were generally consistent in their statements. They testified that § 87(2)(b) told them that § 87(2)(b) locked her out of the apartment, was throwing things, disoriented, and angry. After § 87(2)(b) opened the front door, they both entered the apartment with the officers. § 87(2)(b) barricaded herself in a bedroom and the officers called for ESU. The NYPD made the decision to remove § 87(2)(b) to the hospital. EMT § 87(2)(b) explained that once an EDP is barricaded that the NYPD takes over the situation. However, EMT § 87(2)(b) and EMT § 87(2)(b) agreed that § 87(2)(b) needed to be removed to the hospital because she was not making sense, was angry over seemingly nothing, was trying to fight even when restrained, was attempting to spit on people, and because of the information that her mother reported to them. EMT § 87(2)(b) could not recall specific statements, but believed that § 87(2)(b) was threatening her mother and boyfriend **(Board Review 08, 09).**

Sgt. Burke of ESU testified that patrol officers requested them to the scene for a barricaded EDP. He responded to the apartment along with members from his team. § 87(2)(b) had locked herself in her room and placed furniture up against the door. The ESU officers had tied a rope to the door prior to Sgt. Burke's arrival. § 87(2)(e)

§ 87(2)(e)
§ 87(2)(e)
§ 87(2)(e) Sgt. Burke did not recall if a hole was drilled into the

door in this incident, but said it was very possible. § 87(2)(e)

§ 87(2)(b) Sgt. Burke made the decision to remove § 87(2)(b) to the hospital but did not recall the specific details of the decision or how he came to the decision. The ESU officers gained entry into the room – Sgt. Burke did not recall how, but stated it was possible that they removed the door to do so. Members of the ESU team, of who he recalled Det. Gannon and Det. Ramo, entered the room and placed § 87(2)(b) in handcuffs. Sgt. Burke did not recall if he also entered. Det. Gannon later informed him that upon entry § 87(2)(b) was violent, kicked and threw punches, and one of the officers was hit in the helmet. § 87(2)(b) also spit on the officers **(Board Review 11)**.

Det. Gannon, Det. Ramo’s, and PO Zieline’s statements were consistent with Sgt. Burke’s statement **(Board Review 12, 13, 14)**.

The EVENT shows that § 87(2)(b) called 911 and reported that § 87(2)(b) was acting erratic and locked herself inside of a room **(Board Review 15)**. A second event shows that § 87(2)(b) called 911 and reported that there was a gas odor coming from the basement **(Board Review 16)**.

The AIDED report, prepared by PO Caparatta, states that § 87(2)(b) was acting irrational and paranoid. She locked herself in her bedroom. ESU responded to the location. § 87(2)(b) received accidental swelling to her right eye, forehead, and a broken thumb nail by falling while being restrained **(Board Review 17)**.

According to the emergency doctrine established in People v. Doll, 21 N.Y.3d 665 (2013), the three criteria justifying a warrantless entry are 1) reasonable grounds to believe an emergency is at hand and an immediate need to protect life, 2) the search must not be primarily motivated by intent to arrest or to seize evidence, and 3) there must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched. **(Board Review 02)** **(Board Review 18)**.

NYPD Patrol Guide, Procedure 221-13 defines an emotionally disturbed person as a “person who appears to be mentally ill or temporarily deranged” who must be taken into protective custody if officers believe that the person is likely to injure themselves or others. Upon arrival at the scene, officers must assess the threat posed by the individual, using force only if necessary to prevent serious physical injury or death and only to the extent necessary to restrain the subject. If the individual is barricaded and will not leave voluntarily, officers must request ESU to the scene to help obtain access to the individual and to restrain them. Once the individual has been restrained, officers are to ride in the body of the ambulance and safeguard them until they arrive at the hospital and have been examined by a psychiatrist **(Board Review 19)**.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation D – Force: An officer used physical force against § 87(2)(b)

None of the BWC footage captures this portion of the incident as all of the patrol officers were outside of the building when § 87(2)(b) was placed onto the stretcher (**Board Review 02**). At the time of the incident ESU officers were not assigned BWCs (**Board Review 20**). None of the cellphone videos that § 87(2)(b) recorded cover this portion of the incident (**Board Review 01**).

§ 87(2)(b) testified that after the ESU officers gained entry to the room, the officers held her down onto a bed and handcuffed her. The officers then stood her up and walked her out of the apartment and downstairs into the vestibule of the apartment. There was a stretcher in the vestibule and EMTs were standing outside of the building. § 87(2)(b) walked freely toward the stretcher and did not resist the officers. Once at the stretcher, an officer, who § 87(2)(b) could not describe, grabbed § 87(2)(b)'s shoulders and slammed her onto the stretcher. The officers had not ordered § 87(2)(b) to get onto the stretcher prior to forcing her onto the stretcher. § 87(2)(b)'s face, specifically the area by her eyes, hit the metal side rail of the stretcher and she sustained swelling and bruising to her eyes as a result. The officers then strapped § 87(2)(b) onto the stretcher and rolled her out of the building (**Board Review 03**).

§ 87(2)(b) provided photographs of bruising to her eyes (**Board Review 21**).

§ 87(2)(b)'s medical records show that she was taken to § 87(2)(b) in NYPD custody. § 87(2)(b) had swelling and redness to the right and left side of her face and her left thumb nail was broken. § 87(2)(b) told medical staff that her injuries resulted from being beaten up by the police. She was diagnosed with a subconjunctival hemorrhage to her face without fractures, and it is noted that it would resolve on its own within a few weeks with ice application. § 87(2)(b) was prescribed Tylenol for pain (**Board Review 22**).

§ 87(2)(b) EMT § 87(2)(b) and EMT § 87(2)(b) provided a phone statement and no one was inside of the building when § 87(2)(b) was placed onto the stretcher and no one saw officers use force on § 87(2)(b) (**Board Review 05, 08, 09**).

PO Caparatta testified that she was not present inside of the building when the ESU officers placed § 87(2)(b) onto the stretcher (**Board Review 10**).

Sgt. Burke testified that § 87(2)(b) was rear handcuffed and was resisting the officers' attempts to get into the stretcher or go to the hospital. Sgt. Burke did not recall how § 87(2)(b) was resisting the officers and did not recall if she spit on the officers at this point. Officers, who Sgt. Burke did not recall, had to physically pick up § 87(2)(b) place her into the stretcher, and strap her down. Sgt. Burke did not recall how the officers lifted § 87(2)(b) into the stretcher. Sgt. Burke did not recall if he assisted in restraining § 87(2)(b). Sgt. Burke did not recall if § 87(2)(b) hit her face on the stretcher or sustained any injuries while the officers placed her in the stretcher or if § 87(2)(b) complained of pain. However, Sgt. Burke did recall that § 87(2)(b) sustained swelling to

her eyes and a broken fingernail but did not know how the injuries were sustained (**Board Review 11**).

PO Zielin testified that he, and other officers who PO Zielin did not recall, walked § 87(2)(b) down the steps and into the lobby where a stretcher was waiting. PO Zielin did not recall there being difficulty in getting § 87(2)(b) onto the stretcher. PO Zielin did not recall officers forcing § 87(2)(b) onto the stretcher or § 87(2)(b) hitting her face on the stretcher. PO Zielin did not recall seeing injuries on § 87(2)(b) or § 87(2)(b) complaining of injuries (**Board Review 14**).

Det. Gannon testified that after § 87(2)(b) was restrained in the bedroom, and after she spit on him, he went into the bathroom and washed his face while officers, who he did not recall, escorted § 87(2)(b) out of the building. By the time Det. Gannon exited the building § 87(2)(b) was in the ambulance (**Board Review 12**).

Det. Ramo testified that after § 87(2)(b) was placed into handcuffs patrol officers removed her from the apartment. Det. Ramo remained inside of the apartment and packed up the ESU equipment. Det. Ramo did not recall ESU officers putting § 87(2)(b) onto the stretcher and did not recall § 87(2)(b) hitting her face onto the stretcher (**Board Review 13**).

The AIDED report, prepared by PO Caparatta, states that § 87(2)(b) was acting irrational and paranoid. She locked herself in her bedroom. ESU responded to the location. § 87(2)(b) received accidental swelling to her right eye, forehead, and a broken thumb nail by falling while being restrained (**Board Review 17**).

The TRI reports prepared by Sgt. Burke for Det. Gannon and Det. Ramo states that § 87(2)(b) sustained minor injuries, not requiring treatment at the emergency room, during a struggle to restrain her (**Board Review 23**).

§ 87(2)(b) was not able to provide a description of the officer that allegedly slammed her onto the stretcher. Only Sgt. Burke and PO Zielin acknowledged escorting § 87(2)(b) out of the apartment and placing her onto the stretcher. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

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§ 87(2)(b)

Civilian and Officer CCRB Histories

- This is the second CCRB complaint to which § 87(2)(b) has been a party. § 87(2)(b) (Board Review 25)
- Sgt. Carlin has been a member-of-service for 14 years and has been a subject in four additional CCRB complaints and twelve additional allegations, two of which were substantiated. § 87(2)(g)
 - 201906434 involved substantiated allegations of force-physical force, and discourtesy-word. The Board recommended Command Discipline B. The NYPD has not yet imposed discipline.
- Sgt. Burke has been a member-of-service for 19 years and has been a subject in one additional CCRB complaint and one allegation, which was not substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was unsuitable for mediation.
- As of February 19, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint. **(Board Review 26)**
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 06

| | | |
|--|----------------------------|-------------------|
| Investigator: <u>Inv. Thomas Juliano</u> | <u>Inv. Thomas Juliano</u> | <u>05/26/2021</u> |
| Signature | Print Title & Name | Date |

| | | |
|-----------------------------------|------------------------|-----------------|
| Squad Leader: <u>Jessica Peña</u> | <u>IM Jessica Peña</u> | <u>6/3/2021</u> |
| Signature | Print Title & Name | Date |